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**MAILED**

**MAR 23 2010**

**OFFICE OF PETITIONS**

In re Application of	:	
Gerlt et al.	:	DECISION ON PETITION
Application Number: 10/541815	:	TO WITHDRAW HOLDING OF
Filing Date: 07/08/2005	:	ABANDONMENT
Attorney Docket Number: 411000-	:	
136	:	

This is a decision on the "PETITION TO RE-SEND FINAL OFFICE UNDER 37 C.F.R. §1.181," filed on December 22, 2009, which is treated as a petition to withdraw the holding of abandonment filed on August 10, 2004.

The application was held abandoned for failure to timely submit a reply to the final Office action mailed on June 10, 2009, which set a three (3)-month shortened statutory period for reply.

Petitioners assert that the final Office action mailed on June 10, 2009, was not mailed to the correct address. Specifically, petitioners assert that a revocation and new power of attorney and change of correspondence address were filed on January 12, 2009, but that the Office action mailed on June 10, 2009, was subsequently sent to the old correspondence address.

In support, petitioners have provided a copy of a postcard receipt stamped with an "Office-date" of January 12, 2009, itemizing the filing of a power of attorney by assignee of the entire interest and revocation of prior powers, an assignment form cover sheet, and assignment. The postcard identifies the subject application by application number, first named inventor's name, filing date, invention title, and attorney docket number. A copy of the revocation and power of attorney have also been provided.

A review of Office assignment records indicates that an assignment, including the statement under 37 CFR 3.73(b) included with the subject power of attorney, was filed on January 12, 2009.

The revocation and power of attorney and change of correspondence address filed on January 12, 2009, is not of record in the file and cannot be located. However, M.P.E.P. § 503 states, "[a] post card receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO." Accordingly, it is concluded that the revocation and power of attorney filed on January 12, 2009, was timely filed in the Office but was not matched with the application file.

Accordingly, the final Office action mailed on June 10, 2009, was not mailed to the correct address because the power of attorney and change of correspondence address filed on January 12, 2009 were not entered.

As such, the showing of record is that there is no abandonment in fact. Accordingly, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

The petition is GRANTED.

The power of attorney and change of correspondence address will be entered. All future correspondence will be mailed to the new address. The Notice of Acceptance of Power of Attorney and Notice Regarding Change of Power of Attorney will be mailed under separate cover.

While the copy of the papers filed with the subject petition are considered sufficient to enter the power of attorney change of correspondence address, it is noted that the statement under 37 CFR 3.73(b) does not track the language set forth in the USPTO form. Accordingly, it is recommended that a new Statement Under 37 CFR 3.73(b), utilizing the attached USPTO form, be filed in the Office.

The application file is being referred to Technology Center 2800 technical support staff for remailing of the final Office action. The period for reply will be reset from the mailing date thereof.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.

A handwritten signature in black ink, appearing to read "D. Wood", is positioned above the typed name.

Douglas I. Wood  
Senior Petitions Attorney  
Office of Petitions

Encl: PTO/SB/96